Chapter 172-125 WAC
DISCRIMINATION AND TITLE IX VIOLATIONS BY STUDENTS

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WAC

PART I: COMMITMENT TO NONDISCRIMINATION

172-125-010 Commitment to nondiscrimination and standards of conduct for students.
172-125-020 Scope and jurisdiction.
172-125-030 Reporting, resources, and supportive measures.
172-125-040 Complaints.

PART II: RESOLUTION OPTIONS AND GRIEVANCE PROCEDURES

172-125-200 Informal resolution.
172-125-210 Level one process.
172-125-220 Level two process.
172-125-225 Level three process.
172-125-230 Full hearings before the student disciplinary council.
172-125-240 Appeals of student disciplinary council decisions.
172-125-250 Sanctions and remedies.

PART III: DEFINITIONS AND ADMINISTRATION

172-125-300 Definitions.
172-125-301 Calculation of time periods.
172-125-302 Conflicts of interest and bias.
172-125-305 Administration and records.

PART I: COMMITMENT TO NONDISCRIMINATION

WAC 172-125-010 Commitment to nondiscrimination and standards of conduct for students. Eastern Washington University (EWU) is committed to equity and justice, and respect for the rights and dignity of all people. EWU is committed to providing a learning, living, and working environment free from discrimination and harassment. To fulfill these commitments, this code prohibits students and student organizations from engaging in discrimination, discriminatory harassment, interpersonal violence, sexual assault, sexual misconduct, or retaliation. This code sets forth the expectations for EWU student and student organization behavior and the process for addressing potential violations of the following standards of conduct. More specifically, students and student organizations are prohibited from engaging in:

(1) **Discriminatory conduct.** Discriminatory conduct includes discriminatory treatment and discriminatory harassment. For purposes of both of these violations, the term "protected status" includes race, color, creed, religion, national origin, shared ancestry, citizenship or immigration status, sex, pregnancy, sexual orientation, gender identity/expression, genetic information, age, marital status, families with children, protected veteran or military status, HIV or hepatitis C, status as a mother breastfeeding her child, or the presence of any sensory, mental, or physical disability, or the use of a trained guide dog or service animal by a person with a disability.

(a) **Discriminatory treatment.** Adverse action taken against another individual because of the person's protected status or perception of a person's protected status, excluding protected free speech. Discriminatory treatment includes, but is not limited to, causing physical damage to another person's property because of their protected status or perception of a person's protected status or excluding a person from joining or participating in a student organization because of their protected status or the perception thereof. Individuals and student organizations may be treated differently on the basis of sex only to the extent permitted by Title IX and the Washington Law Against Discrimination.

(b) **Discriminatory harassment.** Physical or verbal conduct that:

(i) Denigrates or shows hostility toward an individual because of their protected status (as defined above) or perceived protected status;

(ii) Is subjectively and objectively offensive; and

(iii) Is sufficiently severe or pervasive as to unreasonably interfere with an individual's academic or work performance, or ability to participate in or benefit from the university's programs and activities.

(2) **Interpersonal violence.** Interpersonal violence encompasses domestic violence, dating violence, and stalking. These terms are defined as:

(a) **Domestic violence:** Any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual relationship, are current or former family members, or adult persons who presently reside together. This includes, but is not limited to, physical abuse, threats of bodily harm or safety, or coercive control. Coercive control is: (i) A pattern of behavior used to cause another to suffer physical, emotional, or psychological harm; (ii) and is intended to or has the effect of unreasonably interfering with a person's free will and personal liberty. Examples of coercive control are identified in RCW 7.105.010(4).

(b) **Dating violence:** Is domestic violence as defined above except the acts are committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. In determining whether such a relationship exists, the following factors are considered:

(i) The length of time the relationship has existed;

(ii) The type of relationship; and

(iii) The frequency of interaction between the parties involved in the relationship.

(c) **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their health and/or safety or the health/safety of others; or

(ii) Suffer substantial emotional distress.

(3) **Sexual harassment.** Harassment on the basis of a person's sex, sexual orientation, or gender identity/expression that meets one of the following standards:

(a) **Hostile environment:** Unwelcome sex-based conduct that, based on the totality of the circumstances, is:

(i) Subjectively and objectively offensive; and

(ii) So severe and pervasive that it created a hostile environment by effectively denying a person equal access to the university's programs or activities.

In determining whether conduct is severe and pervasive, the university shall consider all relevant circumstances from both an objective and subjective perspective including, but not limited to: (A) The type of harassment (verbal or physical); (B) the frequency and severity of the conduct; (C) the age, sex, and relationship of the individuals involved; (D) the degree to which the conduct affected the complainant; (E) the setting and context in which the harassment occurred; (F) whether other incidents have occurred at the university; and (G) other relevant factors. These are factors for consideration; each factor does not need to be met for a hostile environment to exist.

(b) **Quid pro quo harassment:** If a student is working as a university employee or otherwise has the authority to offer benefits or

service to students, sexual harassment exists if the respondent explicitly or impliedly conditioned the provision of such benefit or service on the complainant's participation in unwelcome sexual conduct.

(4) **Sexual assault.** Any sexual act directed against another person, without a person's consent, including instances where a person is not capable of giving consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence, any form of coercion, or physical or psychological intimidation. Sexual activity is nonconsensual when one person is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, age, or physical condition. Incapacitation due to drugs or alcohol refers to an individual who is in a state of intoxication such that the individual is incapable of making rational, reasonable decisions because the person lacks the capacity to give knowing consent.

Sexual assault includes:

(a) **Rape:** The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without a person's consent.

(b) **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the person's consent. Private body parts include, but are not limited to, breasts, genitalia, thighs, and buttocks.

(c) **Sodomy:** Oral or anal sexual intercourse with another person, without the complainant's consent.

(d) **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.

(e) **Statutory rape:** Sexual intercourse with a person who is under the age of consent as defined by state law.

(5) **Sexual misconduct.** Other forms of inappropriate sexual misconduct include indecent liberties; indecent exposure; sexual exhibitionism; prostitution or the solicitation of a prostitute; peeping or other voyeurism; sexual misconduct with a minor; sharing nude images of another without their permission; sextortion; or going beyond the boundaries of consent, such as allowing others to view consensual sex or the nonconsensual recording of sexual activity.

(6) **Retaliation.** Any intimidation, threat, coercion, or discrimination against a person for the purpose of interfering with a person's rights or privileges under this code, or because a person has reported information, made a complaint, testified, assisted, participated or refused to participate in any manner in an investigation, proceeding, informal resolution, or hearing under this code is prohibited. Any actual or threatened retaliation is prohibited and is a separate violation of this code. If the complainant or respondent engages in retaliatory behavior, the university shall take immediate steps to protect the complainant or respondent from further harassment or retaliation.

Additional standards for student conduct are contained in the student conduct code, chapter 172-121 WAC, and the academic integrity code, chapter 172-90 WAC. Standards for employees are contained in university policy.

[Statutory Authority: RCW 28B.35.120(12). WSR 26-11-046, s 172-125-010, filed 5/18/26, effective 6/18/26; WSR 25-14-092, s 172-125-010, filed 7/1/25, effective 8/1/25. Statutory Authority: RCW

28B.35.120(12), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, 42 U.S.C. § 12101 et seq., and chapter 28B.112 RCW. WSR 24-22-048, s 172-125-010, filed 10/28/24, effective 11/28/24.]

WAC 172-125-020 Scope and jurisdiction. EWU shall have jurisdiction over student behavior which occurs on EWU premises or during an EWU-sponsored program or activity. EWU may also exercise jurisdiction over student conduct which occurs at off-campus locations if the behavior adversely affects EWU or an EWU community member. EWU has sole discretion in determining what conduct adversely impacts EWU or an EWU community member.

This code shall apply to conduct without regard to a student's academic status at the time the conduct took place. This includes all periods from the time of application for admission through the actual awarding of a degree, including times between academic periods, breaks in enrollment, or outside of normal business hours. The university may continue a student conduct process even after a student withdraws or graduates. The term "student" is further defined in WAC 172-125-300.

[Statutory Authority: RCW 28B.35.120(12). WSR 25-14-092, s 172-125-020, filed 7/1/25, effective 8/1/25. Statutory Authority: RCW 28B.35.120(12), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, 42 U.S.C. § 12101 et seq., and chapter 28B.112 RCW. WSR 24-22-048, s 172-125-020, filed 10/28/24, effective 11/28/24.]

WAC 172-125-030 Reporting, resources, and supportive measures. (1) **Reporting.** Individuals who believe a student or student organization has engaged in discrimination, harassment, sexual assault, sexual misconduct, or retaliation may report such concerns to any of the following offices:

(a) Civil rights office (www.inside.ewu.edu/civilrights);

(b) Title IX coordinator (www.inside.ewu.edu/titleix); or

(c) Student rights and responsibilities (www.inside.ewu.edu/srr).

This code refers to people who were directly negatively impacted by conduct in violation of this code as "complainants" regardless of whether or not they file a formal complaint with EWU.

(2) **Initial meeting.** After receiving a report, the Title IX coordinator, student accommodations and support services, or their designees will promptly reach out to the complainant, which may or may not be the same as the reporting party, to provide information about EWU's process, their rights, reporting options, resources, and available supportive measures. This will include information about:

(a) **Reporting options:** EWU encourages people to report incidents of discrimination, discriminatory harassment, interpersonal violence, sexual assault, sexual misconduct or retaliation. Complainants have the choice as to whether or not they would like to file a complaint with EWU and/or law enforcement. People can file a complaint, with the help of the Title IX coordinator upon request, with EWU or with local law enforcement, or both, using one of the following options:

(i) EWU process: Complaints may be filed with the Title IX coordinator. This includes complaints against EWU students, employees, contractors, vendors, volunteers, and visitors.

(ii) Criminal: Criminal complaints can be filed with the EWU police department or any law enforcement agency that has jurisdiction over the location where the incident occurred.

(iii) Both: A complainant may report an incident to both EWU and law enforcement.

(b) **Resources:** Complainants will be provided with information about university and community resources relevant to the particular concern, including:

(i) A list of resources for obtaining protective, no contact, restraining, or similar orders;

(ii) How to seek medical treatment, the importance of preserving evidence relevant to the alleged conduct or that may be helpful in obtaining a protective order, and procedures to follow to preserve such evidence; and

(iii) A list of existing on and off campus counseling, health care services, mental health services, victim advocacy, financial aid, legal assistance, visa and immigration assistance, and other services for complainants and respondents;

(c) **Overview of EWU's discrimination and Title IX processes:** Information will also be provided about EWU's process for responding to complaints under this code, including:

(i) Importance of preserving evidence that may assist in investigation of the incident or that may be helpful in obtaining a protection order;

(ii) EWU's policies regarding the confidentiality of complaints;

(iii) How to request supportive measures;

(iv) EWU's investigative and hearing process, including who will receive a copy of the investigative report;

(v) Options for informal resolution; and

(vi) EWU's prohibition against retaliation and how to report retaliation.

(3) **Supportive measures.** After receiving a report of discrimination, the Title IX coordinator or designee will review the complaint and determine whether or not supportive measures or interim restrictions are needed. Supportive measures are available for all students and employees regardless of whether someone wants to file a complaint. Requests for supportive measures may be directed to student accommodations and support services or the Title IX coordinator. Supportive measures may be in place before a complaint is filed, during the investigation and decision-making process, informal resolution process, and/or after the final determination of responsibility. Supportive measures are also available for both complainants and respondents.

Supportive measures are provided by EWU free of charge and may include, but are not limited to, safety planning with EWU, mutual restrictions on contact between the parties, academic or workplace modifications, leaves of absence, increased security, counseling options on campus, or campus housing modifications. Supportive measures are designed to restore or preserve equal access to EWU's educational programs or activities without unreasonably burdening either party, including protecting the safety of all parties and EWU's educational environment, or deterring sexual misconduct or discrimination. Supportive measures may be provided for a specific period of time or throughout the remainder of a student's time at EWU.

If a complainant or respondent disagrees with the supportive measures determination, they may file a written appeal with the dean of students within 10 calendar days of the determination by emailing dos@ewu.edu. The dean of students, or designee, may affirm, modify, or reverse the supportive measures determination. Such decision shall be served on the appealing party in writing. If a student's circumstances change materially, they may request new or additional supportive measures.

Supportive measures are confidential and will only be shared with those people who need to know such information to enable EWU to provide the supportive measures. The Title IX coordinator or designee is responsible for coordinating the effective implementation of supportive measures. All supportive measures should be documented and retained for seven years.

(4) **Confidentiality.** Information gathered during an investigation and adjudication of a complaint under this code will be maintained in a confidential manner to the extent permitted by law. During an investigation, complaint information will be disseminated only on a need-to-know basis. If the complainant wishes to remain anonymous, the university will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crime to the campus community, timely warnings, and EWU's annual security report shall not include the names of the complainants or victims. Files subject to public disclosure will be released to the extent required by law.

The university will not require a complainant or respondent to abide by a nondisclosure agreement that would prevent the redisclosure of information related to an investigation or disciplinary action under this policy.

[Statutory Authority: RCW 28B.35.120(12). WSR 25-14-092, s 172-125-030, filed 7/1/25, effective 8/1/25. Statutory Authority: RCW 28B.35.120(12), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, 42 U.S.C. § 12101 et seq., and chapter 28B.112 RCW. WSR 24-22-048, s 172-125-030, filed 10/28/24, effective 11/28/24.]

WAC 172-125-040 Complaints. (1) **Filing of complaints.**

(a) **Who can file a complaint.** Complaints can be filed by anyone who has been directly impacted by conduct that violates this code. The Title IX coordinator can also file a complaint against a student or student organization on behalf of the university. If a complaint is filed by the Title IX coordinator, the Title IX coordinator will not be considered a complainant for the purposes of participating in the investigation and hearing process.

(b) **How to file a complaint.** To initiate a complaint, a person must submit a request for the university to investigate their concerns either verbally or in writing to the Title IX coordinator or designee.

Complaints must be filed in good faith. Formal Title IX complaints must be made in writing.

(c) **Other complaint options.** Filing a complaint under this code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) **Student conduct code violations.** All complaints against students that do not fall within the scope of this code will be forwarded to student rights and responsibilities for further review and action under the student conduct code, chapter 172-121 WAC.

(2) **Complaint review and dismissal/referral.** Upon receipt of a complaint, the Title IX coordinator shall review the complaint to determine whether it includes allegations of violations of this code and to determine which process applies within 14 calendar days of receiving such complaint. This time may be extended if the Title IX coordinator needs additional information to make such determination or if there is an active criminal investigation. If a complaint falls within the scope of this code, it shall be addressed in accordance with the procedures below and the Title IX coordinator shall determine whether or not the Level One Process, Level Two Process, or Level Three Process applies. If the complainant or respondent has requested informal resolution, the Title IX coordinator will determine whether or not informal resolution is appropriate and, if so, refer the matter to the person designated to handle informal resolutions. If the complaint falls outside of the scope of this code, it shall be referred to the office of student rights and responsibilities for review under the student conduct code, chapter 172-121 WAC.

Additionally, even if a complaint falls within the scope of this code, the Title IX coordinator may dismiss the complaint if:

(a) EWU is unable to identify the respondent after taking reasonable steps to do so;

(b) The respondent is not a student or student organization. Complaints against university employees, volunteers, contractors, and program participants are handled under EWU policy and are outside of the scope of this code;

(c) The complainant voluntarily withdraws any or all of the allegations in the complaint in writing, the Title IX coordinator declines to initiate a complaint on behalf of the university, and, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not meet the definition of discrimination, discriminatory harassment, sexual assault, sexual misconduct, interpersonal violence, or retaliation under this code even if proven; or

(d) The conduct alleged in the complaint, even if substantiated by a preponderance of the evidence, would not constitute a violation of this code. Prior to making this determination, the Title IX coordinator or investigator must make reasonable efforts to clarify the allegations with the complainant.

If the complaint falls within the definition of a formal Title IX complaint, a written complaint must be received from either the complainant or the Title IX coordinator requesting initiation of the investigative process, or the complaint will be dismissed. The alleged conduct may be addressed using a different process, but not using the Level Three Process.

The Title IX coordinator will inform the complainant in writing of the reason for dismissing the complaint. If the respondent has already received a notice of investigation, the respondent will also be

simultaneously served with notice of the dismissal and the reasons for the dismissal.

Even if a complaint is dismissed, the complainant will be offered supportive measures. If the respondent has already been notified, the respondent will also be offered supportive measures. The Title IX coordinator will also take other appropriate prompt and effective steps to ensure that discrimination does not continue or recur within EWU programs or activities.

The Title IX coordinator may consolidate complaints under this code when the allegations of discrimination, harassment, interpersonal violence, sexual assault, sexual misconduct, or retaliation arise out of the same facts or circumstances. When more than one complaint is involved, all references to the "complainant" throughout this code include all individuals who have filed a complaint against the respondent that are consolidated into one investigation.

(3) **Informal resolution.** If a complainant and respondent are both interested in informal resolution and the Title IX coordinator determines informal resolution is appropriate, EWU will follow the process identified in WAC 172-125-200.

(4) **Appeal of dismissal.** If the complainant or respondent disagrees with the Title IX coordinator's decision to dismiss a complaint, the party may file an appeal with the dean of students within three calendar days of the Title IX coordinator's decision by emailing such appeal to dos@ewu.edu. Appeals may be filed for one or more of the following reasons:

(a) Procedural irregularity that would change the outcome of the Title IX coordinator's decision;

(b) New evidence that would change the Title IX coordinator's decision that was not reasonably available when the dismissal was made; or

(c) The Title IX coordinator or designee had a conflict of interest or bias for or against complainants or respondents generally or the individual parties that would change the outcome.

If the respondent has not been notified of the complaint prior to the dismissal, the respondent will not be notified of the dismissal or appeal. If the respondent has been notified of the complaint, the respondent will also be provided with notice of the dismissal and given the same opportunity to appeal the determination. They will also receive notice if the complainant appeals. If one party appeals and the other party is entitled to notice, the other party will be given notice of the appeal and three calendar days to provide a response to the appeal. The dean of students or designee can affirm, reverse, or remand the Title IX coordinator's decision and such decision must be served in writing simultaneously to the parties who participated in the appeal.

(5) **Interim restrictions.** The Title IX coordinator or designee will also determine whether or not interim restrictions are needed after conducting an individualized safety and risk determination in conjunction with other EWU officials. Interim restrictions must be in place in situations where there is cause to believe that a student or a student organization poses an imminent and serious threat to the health or safety of any student or other individual arising from the alleged misconduct, including themselves. After interim restrictions are imposed, the complaint will be referred for investigation under this code.

(a) Interim restrictions may include, but are not limited to:

(i) Denial of access to certain areas, assignment to alternate university housing or removal from university housing, limitation of access to university facilities, limitations on engaging in certain activities, or restriction of communication with specific individuals or groups;

(ii) Interim suspension, including temporary total removal from the university or restriction of access to campus;

(iii) Mandatory medical/psychological assessment of the student's capability to remain in the university; or

(iv) Administrative leave for student employees.

(b) The Title IX coordinator or investigator will issue a notice identifying the interim restrictions that will be served on the restricted student. At minimum, the notice will include:

(i) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(ii) How those alleged act(s) or behavior(s) could constitute a violation of this code;

(iii) How the circumstances of the case necessitated the interim restriction action(s); and

(iv) An explanation of the process for emergency appeal reviews.

(c) The complainant will also be provided with notice of any interim restrictions that relate directly to the complainant. If the respondent appeals such interim restrictions, the complainant will be given notice of the respondent's appeal and an opportunity to submit a statement within five calendar days of the notice as to why the interim restriction should or should not be modified.

(d) Emergency appeal review.

(i) If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal review with the vice president for student affairs, or designee. If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs within five calendar days after service of the interim restriction. In all cases, the student must submit any information the student wishes the vice president to consider within five calendar days after service of the interim restriction. The appealing party should outline the desired modification(s) to the interim restriction as well as the specific challenge(s) to the interim restriction decision. Challenges to interim restriction decisions are limited to whether or not there is adequate cause to believe a student or a student organization poses an imminent and serious threat to the health or safety or any student or other individual. Appealing parties are limited to submitting their own written statements. Any other evidence should be submitted to the investigator during the investigative process.

(ii) The vice president for student affairs, or designee, will conduct an emergency appeal review after receiving the respondent's review and complainant's response, if any. Emergency appeal reviews will address only the interim restriction decision of the Title IX coordinator and the basis on which the restriction modification or termination is requested by the appealing party. The emergency appeal review does not replace the regular investigative process. In the emergency appeal review, the vice president will only review materials available to and information considered by the Title IX coordinator at the time the interim restriction was imposed, written statements by the two parties, and information that becomes available as a part of the university's investigation that the vice president deems relevant.

(iii) During the emergency appeal review, the vice president for student affairs will review available materials and statements. The vice president for student affairs will issue a written decision upholding, modifying, or terminating the interim restriction decision. The written decision shall include a rationale for the basis of the decision and be served within 14 calendar days of the date all appeal materials were submitted.

(iv) The interim restriction does not replace the regular investigative process, which will proceed as quickly as feasible consistent with this code.

(e) Duration. An interim restriction will remain in effect until terminated, in writing, by a decision-maker following the Level One, Level Two, or Level Three processes outlined in this code or following a timely appeal of the restriction.

[Statutory Authority: RCW 28B.35.120(12). WSR 25-14-092, s 172-125-040, filed 7/1/25, effective 8/1/25. Statutory Authority: RCW 28B.35.120(12), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, 42 U.S.C. § 12101 et seq., and chapter 28B.112 RCW. WSR 24-22-048, s 172-125-040, filed 10/28/24, effective 11/28/24.]

PART II: RESOLUTION OPTIONS AND GRIEVANCE PROCEDURES

WAC 172-125-200 Informal resolution. (1) **Referral.** The Title IX coordinator or investigator may refer any report or complaint to the informal resolution process. It is not necessary that a formal complaint be filed for a report to be referred to this process, unless the complaint meets the definition of a formal Title IX complaint. A report/complaint may be referred to the informal resolution process at any time prior to the completion of an investigation. The Title IX coordinator may determine informal resolution is not appropriate, even if requested by both parties, if the alleged conduct could present a future risk of harm to others. Informal resolution is not available for complaints of sexual harassment committed by an employee against a student.

(2) **Voluntary participation.** Informal resolution processes may include a variety of voluntary processes that are structured to facilitate dialogue between impacted parties while balancing support and accountability. The various types of informal resolution options available at EWU and procedures for resolution are available on the EWU Title IX website. In all cases, the impacted parties must agree in writing to participate in the informal process and EWU will not require or pressure a party to participate in the informal process. A party is not required to waive the right to an investigation and/or hearing to participate in this process.

(3) **Informal resolution officer.** Informal resolutions will be handled by an EWU employee who is trained to facilitate such processes. In no case will the informal resolution officer be the same person as the investigator or any EWU employee who will make a decision regarding the complaint if informal resolution is not successful. The informal resolution officer must also not have a conflict of interest

or bias for or against complainants or respondents generally or an individual complainant or respondent.

(4) **Written information about the process.** Before beginning the informal resolution process, EWU will provide both parties with the following information in writing:

(a) Summary of the alleged conduct;

(b) The requirements of the informal resolution process;

(c) Notice that, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the investigative process;

(d) That the parties' agreement to a resolution at the conclusion of the informal resolution process will preclude the parties from initiating or resuming a formal complaint process arising from the same allegations;

(e) The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and

(f) What information EWU will maintain and whether and how EWU might use such information if the formal complaint process is initiated or resumed.

(5) **Options for resolution.** Potential terms that may be included in an informal resolution agreement include, but are not limited to:

(a) Restrictions on contact;

(b) Restrictions on the respondent's participation in university programs or activities or attendance at specific events;

(c) Training; or

(d) Any other terms the parties agree upon that the informal resolution officer deems appropriate.

(6) **Written agreement.** Any informal resolution agreement must be in writing and signed by the parties and the informal resolution officer. In the agreement, the parties must be advised in writing that:

(a) The agreement is final, and they are waiving any right to a formal complaint process, including any right to appeal; and

(b) If a student does not successfully complete all aspects of an agreement, they may be charged with failure to comply under the student conduct code, chapter 172-121 WAC, and/or any possible violation of this code for the conduct that was the basis for the informal resolution.

(7) **Referral back to the formal complaint process.** If any party decides to leave the informal resolution process or the informal resolution officer determines the process is no longer appropriate, then the matter shall be referred back to the Title IX coordinator to determine the next steps under this code.

[Statutory Authority: RCW 28B.35.120(12). WSR 25-14-092, s 172-125-200, filed 7/1/25, effective 8/1/25. Statutory Authority: RCW 28B.35.120(12), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, 42 U.S.C. § 12101 et seq., and chapter 28B.112 RCW. WSR 24-22-048, s 172-125-200, filed 10/28/24, effective 11/28/24.]

WAC 172-125-210 Level one process. (1) **Applicability.** The Level One Process applies to all violations of this code that do not involve felony-level crimes, would not result in the suspension or expulsion

of a student, or fall within the definition of a formal Title IX complaint. If the alleged misconduct could constitute a felony-level crime or result in a student's suspension or expulsion, it must be referred to the Level Two Process outlined in WAC 172-125-220. If the alleged misconduct fits within the definition of a formal Title IX complaint, it must be referred to the Level Three Process outlined in WAC 172-125-225. The Level One Process is considered a brief adjudicative proceeding pursuant to RCW 34.05.482.

If the alleged conduct could constitute a violation of this code and the student conduct code, chapter 172-121 WAC, and the alleged violations arise out of the same facts or circumstances, the Level One Process outlined in this code may be used to determine violations of this code and the student conduct code in lieu of having two separate proceedings. The investigator will determine whether or not to include violations of either code as documented in the notice of investigation and allegations.

(2) **Notice of investigation and allegations.** If the Title IX coordinator refers a complaint to investigation, the Title IX coordinator will assign an investigator to conduct an investigation. The investigator will serve the respondent and complainant with a notice of investigation and allegations that meets the following requirements:

(a) Is made in writing;

(b) Includes a written list of the allegations against the respondent with sufficient details of the allegations based on current information including, if known, date and time of the incident, description of the conduct, and the specific sections of this code and the student conduct code allegedly violated;

(c) Contact information for the investigator;

(d) Parties' rights during the process, including:

(i) Right to a fair and equitable process.

(ii) Right to have investigators and decision-makers that do not have a conflict of interest or bias against the parties.

(iii) Right to remain silent during the investigation.

(iv) Right to have an advisor of their choice, at their cost, during the process. The advisor may be, but is not required to be, an attorney. During the investigative process, the advisor may be present and advise the party, but may not answer questions on the party's behalf.

(v) Right to provide evidence to the investigator.

(vi) Right to be presumed not responsible and that a conclusion of responsibility is not made until the conclusion of the investigative process.

(vii) Right to request an accommodation or interpreter for the process.

(e) Information about the investigative process and, if applicable, informal resolution;

(f) A statement that complainants, respondents, and witnesses are prohibited from knowingly making false statements or furnishing false information during the process. A person will not be disciplined for making a false statement based solely on whether or not EWU determines a complaint under this code is substantiated.

(g) EWU's prohibition on retaliation and how to report acts of retaliation;

(h) Information about how the parties will be provided an equal opportunity to access relevant information gathered during the investigation; and

(i) Information about supportive measures and resources available to both parties.

(3) **Investigative process.** During the investigation, the investigator is responsible for gathering sufficient evidence to determine whether or not this code has been violated. The investigator has discretion in determining the formality, scope, and process of the investigation. If additional allegations are discovered during the course of the investigation, the investigator shall issue an updated notice of investigation. Before scheduling an interview with a complainant or respondent, the investigator must provide the party with written notice of the date, time, location, participants, and purpose of the meeting with sufficient time for the party to prepare. The investigative process must include:

(a) Contacting the complainant to review the complaint, gather more information, and to identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.). If necessary, the investigator may contact the complainant on more than one occasion during the course of the investigation to obtain additional information and clarification. If the investigator is not able to obtain sufficient information or if the complainant withdraws the complaint during the investigative process, the investigator may refer the complaint back to the Title IX coordinator to determine whether or not dismissal is appropriate.

(b) Contacting the respondent to review the complaint, gather more information, and to identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.).

(c) Conducting interviews with witnesses who have knowledge of the alleged behavior and gathering relevant evidence. Witnesses may be contacted once or numerous times as necessary to gather the relevant information.

(d) Parties may identify fact witnesses, expert witnesses, and other inculpatory and exculpatory evidence. If a party wishes to provide information from an expert witness, the party is responsible for any costs associated with the expert witness.

(e) The investigator must have the ability to question parties and witnesses to assess their credibility to the extent credibility is both in dispute and relevant. The investigator may ask questions during individual meetings with a party or witness.

(f) The investigator may choose to place less or no weight upon statements by a party or witness who refuses to respond to the investigator's questions. The investigator, however, must not draw an inference about whether or not this code was violated based solely on a party's or witness's refusal to respond to the investigator's questions.

(g) After gathering the relevant evidence, the investigator must provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is relevant to the allegations raised in the complaint and not otherwise impermissible.

(h) The investigation shall not include evidence nor shall any information provided be disclosed to another person if such information:

(i) Is evidence protected under a legal privilege recognized by federal or state law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

(ii) Records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofes-

sional in connection with the provision of treatment to the party or witness, unless EWU obtains that party's or witness's voluntary, written consent for use of the information in the investigation;

(iii) Information about the complainant's sexual predisposition or prior sexual behavior, unless the evidence is relevant to demonstrate that someone other than the respondent committed the conduct alleged by the complainant, or the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is relevant to the question of consent. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent in the incident under investigation.

(4) **Investigative report and determinations of responsibility.**

(a) After gathering the relevant evidence, the investigator must objectively evaluate the information gathered and determine the credibility of the parties. Credibility determinations must not be based on a person's status as a complainant, respondent, or witness. The investigator will prepare an investigative report that accurately summarizes the information gathered and makes determinations on whether or not this code or the student conduct code has been violated based on a preponderance of the evidence, meaning it is more probable than not that an act occurred.

(b) If the investigator determines the respondent has not violated this code or any provision of the student conduct code, the investigator will simultaneously serve the investigative report on the complainant and respondent along with information about how to appeal the investigator's decision.

(c) If the investigator determines the respondent has violated this code or any provision of the student conduct code, the investigator will send the investigative report to the director of student rights and responsibilities. The director or director's designee will then determine the appropriate sanction for the misconduct substantiated by the investigator within seven calendar days of receiving the investigative report. The director will also determine whether or not remedies for the complainant or other impacted students are appropriate. Remedies must be provided to the complainant or other impacted students if needed to restore or preserve equal access to the university's educational programs or activities. The director or designee will add an additional section to the investigative report setting forth their decision as to the appropriate sanction and the reasons for their decision. The director or designee will then simultaneously serve the full investigative report and sanctioning decision on the complainant and respondent along with information about how to appeal the investigator and director's decisions. In addition to sanctions under this code, if the student is also an employee of the university, the director's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with the university policy.

(5) **Timelines and extensions.** EWU must respond to complaints under this code in a prompt and equitable manner. To assist EWU in reaching this goal, this code includes various timelines. EWU's goal is to complete investigations within 90 days. If EWU needs additional time, the investigator must provide written notice to the complainant and respondent of the delay and reasons for the delay. Delays and extensions beyond 90 days must be based on good cause.

(6) **Appeals.**

(a) Timeline. Either party may file an appeal from the investigator's decision regarding responsibility or the director's decision regarding the sanction. Appeals must be submitted in writing by 5:00 p.m. PST within 21 calendar days from the date the investigative report is sent to the parties. Appeals must be submitted via email to srr@ewu.edu. The appeal must include the party's name and why they believe the investigator or director's decision was incorrect based on the bases for appeal outlined below. If no appeal is timely filed, the investigator/director's decisions are final.

(b) Basis for appeal. Appeals may be filed for one or more of the following reasons:

(i) Procedural irregularity that would change the outcome of the investigator or director's decisions;

(ii) New evidence that would change the investigator's decision that was not reasonably available when the investigative report was finalized; or

(iii) The investigator or director had a conflict of interest or bias for or against complainants or respondents generally or the individual parties that would change the outcome of the investigation.

(c) Once an appeal is filed, the office of student rights and responsibilities will serve the other party with a copy of the appeal. The other party will be given five calendar days to provide a written response to the appeal.

(d) Stay of sanctions. Sanctions go into effect immediately after the director's decision is issued. If the respondent wishes to have a sanction stayed during the appeal process, a request for a stay must be filed along with the notice of appeal. The request for the stay will be reviewed by the director or designee. The stay may be granted in part or in its entirety, at the discretion of the director. The decision will be served on the respondent and the complainant. This decision is not subject to appeal.

(e) Appeals will be determined by the dean of students or designee. The director will provide the appeal authority with the notice of appeal, any responses to the appeal, and the investigative report. Before rendering a decision, the appeal authority may request additional information or explanation from the parties. However, except as required to explain the basis of new information, an appeal shall be limited to a review of the investigative report.

(f) After reviewing the appeal, the appeal authority may affirm, reverse, modify, or remand the decision(s) of the investigator and/or director. The appeal decision shall include an explanation of the appeal authority's decision and rationale. The appeal decision must be served on the complainant and respondent within 30 calendar days of the appeal authority receiving all necessary documentation. In cases where the appeal authority remands the decision or sanction, the case will be returned to either the investigator or director for reconsideration or other action as specified by the appeal authority. With respect to sanctions, the appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

(g) Notification. Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall draft a brief written statement setting forth the outcome of the appeal and the basis for their decision. This is then forwarded to the director. The director shall serve the writ-

ten statement on the complainant and respondent. The notice will also inform the parties that the appeal authority's decision is final and no further appeals may be made within the university. Judicial review of the university's decision may be available under chapter 34.05 RCW.

[Statutory Authority: RCW 28B.35.120(12). WSR 25-14-092, s 172-125-210, filed 7/1/25, effective 8/1/25. Statutory Authority: RCW 28B.35.120(12), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, 42 U.S.C. § 12101 et seq., and chapter 28B.112 RCW. WSR 24-22-048, s 172-125-210, filed 10/28/24, effective 11/28/24.]

WAC 172-125-220 Level two process. (1) **Applicability.** The Level Two Process applies to all violations of this code that involve felony-level crimes or that may result in the suspension or expulsion of a student, but that do not fall within the definition of a formal Title IX complaint. If any of the alleged misconduct could constitute a felony-level crime or result in a student's suspension or expulsion, it must be referred to the Level Two Process outlined in this section. The Level Two Process is considered a full adjudicative proceeding pursuant to chapter 34.05 RCW. Alleged misconduct that fits within the definition of a formal Title IX complaint must be referred to the Level Three Process outlined in WAC 172-125-225.

If the alleged conduct could constitute a violation of this code and a violation of the student conduct code, chapter 172-121 WAC, and the alleged violations arise out of the same facts or circumstances, the Level Two Process outlined in this code may be used to determine violations of this code and the student conduct code in lieu of having two separate proceedings. The investigator will determine whether or not to include violations of either code as documented in the notice of investigation and allegations.

(2) **Notice of investigation and allegations.** If the Title IX coordinator refers a complaint to investigation under the Level Two Process, the Title IX coordinator will assign an investigator to conduct an investigation. The investigator will serve the respondent and complainant with a notice of investigation and allegations that meets the following requirements:

(a) Is made in writing;

(b) Includes a written list of the allegations against the respondent with sufficient details of the allegations based on current information including, if known, date and time of the incident, description of the conduct, and the specific sections of this code and the student conduct code allegedly violated;

(c) Contact information for the investigator;

(d) Parties' rights during the process, including:

(i) Right to a fair and equitable process.

(ii) Right to have investigators and decision-makers that do not have a conflict of interest or bias against the parties.

(iii) Right to remain silent during the investigation.

(iv) Right to have an advisor of their choice, at their cost, during the process. The advisor may be, but is not required to be, an attorney. During the investigative process, the advisor may be present and advise the party, but may not answer questions on the party's behalf.

(v) Right to provide evidence to the investigator.

(vi) Right to be presumed not responsible and that a conclusion of responsibility is not made until the conclusion of the investigative process.

(vii) Right to request an accommodation or interpreter for the process.

(e) Information about the investigative process and, if applicable, informal resolution;

(f) A statement that complainants, respondents, and witnesses are prohibited from knowingly making false statements or furnishing false information during the process. A person will not be disciplined for making a false statement based solely on whether or not EWU determines a complaint under this code is substantiated;

(g) EWU's prohibition on retaliation and how to report acts of retaliation;

(h) Information about how the parties will be provided an equal opportunity to access relevant information gathered during the investigation; and

(i) Information about supportive measures and resources available to both parties.

(3) **Investigative process.** During the investigation, the investigator is responsible for gathering sufficient evidence to determine whether or not this code has been violated. The investigator has discretion in determining the formality, scope, and process of the investigation. If additional allegations are discovered during the course of the investigation, the investigator shall issue an updated notice of investigation. Before scheduling an interview with a complainant or respondent, the investigator must provide the party with written notice of the date, time, location, participants, and purpose of the meeting with sufficient time for the party to prepare. The investigative process must include:

(a) Contacting the complainant to review the complaint, gather more information, and identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.). If necessary, the investigator may contact the complainant on more than one occasion during the course of the investigation to obtain additional information and clarification. If the investigator is not able to obtain sufficient information or if the complainant withdraws in writing the complaint during the investigative process, the investigator may refer the complaint back to the Title IX coordinator to determine whether or not dismissal is appropriate. Any withdrawal must be in writing.

(b) Contacting the respondent to review the complaint, gather more information, and to identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.).

(c) Conducting interviews with witnesses who have knowledge of the alleged behavior and gathering relevant evidence. Parties and witnesses may be contacted once or numerous times as necessary to gather the relevant information.

(d) Parties may present fact witnesses, expert witnesses, and other inculpatory and exculpatory evidence. If a party wishes to present information from an expert witness, the party is responsible for any costs associated with the expert witness.

(e) The investigator must have the ability to question parties and witnesses to assess their credibility to the extent credibility is both in dispute and relevant. The investigator may ask questions during individual meetings with a party or witness.

(f) The investigator may choose to place less or no weight upon statements by a party or witness who refuses to respond to the investigator's questions. The investigator, however, must not draw an inference about whether or not this code was violated based solely on a party's or witness's refusal to respond to the investigator's questions.

(g) After gathering the relevant evidence, the investigator must provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is relevant to the allegations raise in the complaint and not otherwise impermissible.

(h) The investigation shall not include evidence nor shall any information provided be disclosed to another person if such information:

(i) Is evidence protected under a legal privilege recognized by federal or state law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

(ii) Records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless EWU obtains that party's or witness's voluntary, written consent for use of the information in the investigation;

(iii) Information about the complainant's sexual predisposition or prior sexual behavior, unless the evidence is relevant to demonstrate that someone other than the respondent committed the conduct alleged by the complainant, or the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is relevant to the question of consent. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent in the incident under investigation.

(4) **Investigative report and determinations of responsibility.**

(a) After gathering the relevant evidence, the investigator must objectively evaluate the information gathered and determine the credibility of the parties. Credibility determinations must not be based on a person's status as a complainant, respondent, or witness. The investigator will prepare an investigative report that accurately summarizes the information gathered and makes determinations on whether or not this code or the student conduct code has been violated based on a preponderance of the evidence.

(b) If the investigator determines the respondent has not violated this code or any provision of the student conduct code, the investigator will simultaneously serve the complainant and respondent with the investigative report along with information about how to appeal the investigator's decision.

(c) If the investigator determines the respondent has violated this code or any provision of the student conduct code, the investigator will send the investigative report to student rights and responsibilities. The director or director's designee will then determine the appropriate sanction for the misconduct substantiated by the investigator within seven calendar days of receiving the investigative report. The director will also determine whether or not remedies for the complainant or other impacted students are appropriate. Remedies must be provided to the complainant or other impacted students if needed to restore or preserve equal access to the university's educational programs or activities. The director or designee will add an additional section to the investigative report setting forth their decision as to

the appropriate sanction and the reasons for their decision. The director or designee will then simultaneously serve the complainant and respondent with the full investigative report and sanctioning decision, along with information about how to appeal the investigator and director's decisions. In addition to sanctions under this code, if the student is also an employee of the university, the director's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

(5) **Timelines and extensions.** EWU must respond to complaints under this code in a prompt and equitable manner. To assist EWU in reaching this goal, this code includes various timelines. EWU's goal is to have investigations completed within 90 days. If the university needs additional time, the investigator must provide written notice to the complainant and respondent of the delay and reasons for the delay. Delays and extensions beyond 90 days must be based on good cause.

(6) **Initial appeal to student disciplinary council.** If either party disagrees with the decision of the investigator or director, they may request a full de novo hearing by filing a request for hearing with the office of student rights and responsibilities. The request for hearing must be sent in writing to srr@ewu.edu by 5:00 p.m. PST within 21 calendar days from the date the investigative report is sent to the parties. If a timely request for hearing is received, the director will refer the case to a full hearing before the student disciplinary council under WAC 172-125-230.

[Statutory Authority: RCW 28B.35.120(12). WSR 25-14-092, s 172-125-220, filed 7/1/25, effective 8/1/25. Statutory Authority: RCW 28B.35.120(12), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, 42 U.S.C. § 12101 et seq., and chapter 28B.112 RCW. WSR 24-22-048, s 172-125-220, filed 10/28/24, effective 11/28/24.]

WAC 172-125-225 Level three process. (1) **Applicability.** The Level Three Process applies to any complaint that meets the definition of a formal Title IX complaint. The Level Three Process is considered a full adjudicative proceeding pursuant to chapter 34.05 RCW.

If the alleged conduct could also constitute another violation of this code or the student conduct code, chapter 172-121 WAC, and the alleged violations arise out of the same facts or circumstances, the Level Three Process outlined in this code may be used to determine Title IX violations, other violations of this code and the student conduct code in lieu of having separate proceedings. The investigator will determine whether or not to include violations of either code as documented in the notice of investigation and allegations.

(2) **Notice of investigation and allegations.** If the Title IX coordinator refers a complaint to investigation under the Level Three Process, the Title IX coordinator will assign an investigator to conduct an investigation. The investigator will serve the respondent and complainant with a notice of investigation and allegations that meets the following requirements:

(a) Is made in writing;

(b) Includes a written list of the allegations against the respondent with sufficient details of the allegations based on current

information including, if known, date and time of the incident, description of the conduct, and the specific sections of this code and the student conduct code allegedly violated;

(c) Contact information for the investigator;

(d) Parties' rights during the process, including:

(i) Right to a fair and equitable process.

(ii) Right to have investigators and decision-makers that do not have a conflict of interest or bias against the parties.

(iii) Right to remain silent during the investigation.

(iv) Right to have an advisor of their choice during the process. The advisor may be, but is not required to be, an attorney. During the investigative process, the advisor may be present and advise the party, but may not answer questions on the party's behalf. The university will provide an advisor to a party that does not have one for the purpose of conducting cross-examination during a hearing.

(v) Right to provide evidence to the investigator.

(vi) Right to be presumed not responsible and that a conclusion of responsibility is not made until the conclusion of the investigative process.

(vii) Right to request an accommodation or interpreter for the process.

(e) Information about the investigative process and, if applicable, informal resolution;

(f) A statement that complainants, respondents, and witnesses are prohibited from knowingly making false statements or furnishing false information during the process. A person will not be disciplined for making a false statement based solely on whether or not EWU determines a complaint under this code is substantiated;

(g) EWU's prohibition on retaliation and how to report acts of retaliation;

(h) Information about how the parties will be provided an equal opportunity to access relevant information gathered during the investigation; and

(i) Information about supportive measures and resources available to both parties.

(3) **Investigative process.** During the investigation, the investigator is responsible for gathering sufficient evidence to determine whether or not this code has been violated. The investigator has discretion in determining the formality, scope, and process of the investigation. If additional allegations are discovered during the course of the investigation, the investigator shall issue an updated notice of investigation. Before scheduling an interview with a complainant or respondent, the investigator must provide the party with written notice of the date, time, location, participants, and purpose of the meeting with sufficient time for the party to prepare. The investigative process must include:

(a) Contacting the complainant to review the complaint, gather more information, and identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.). If necessary, the investigator may contact the complainant on more than one occasion during the course of the investigation to obtain additional information and clarification. If the investigator is not able to obtain sufficient information or if the complainant withdraws in writing the complaint during the investigative process, the investigator may refer the complaint back to the Title IX coordinator to determine whether or not dismissal is appropriate. Any withdrawal must be in writing.

(b) Contacting the respondent to review the complaint, gather more information, and to identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.).

(c) Conducting interviews with witnesses who have knowledge of the alleged behavior and gathering relevant evidence. Parties and witnesses may be contacted once or numerous times as necessary to gather the relevant information.

(d) Parties may present fact witnesses, expert witnesses, and other inculpatory and exculpatory evidence. If a party wishes to present information from an expert witness, the party is responsible for any costs associated with the expert witness.

(e) The investigator must have the ability to question parties and witnesses to assess their credibility to the extent credibility is both in dispute and relevant. The investigator may ask questions during individual meetings with a party or witness.

(f) The investigator may choose to place less or no weight upon statements by a party or witness who refuses to respond to the investigator's questions. The investigator, however, must not draw an inference about whether or not this code was violated based solely on a party's or witness's refusal to respond to the investigator's questions.

(g) The investigation shall not include evidence nor shall any information provided be disclosed to another person if such information:

(i) Is evidence protected under a legal privilege recognized by federal or state law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

(ii) Records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless EWU obtains that party's or witness's voluntary, written consent for use of the information in the investigation;

(iii) Information about the complainant's sexual predisposition or prior sexual behavior, unless the evidence is relevant to demonstrate that someone other than the respondent committed the conduct alleged by the complainant, or the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is relevant to the question of consent. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent in the incident under investigation.

(4) **Investigative report.**

(a) After gathering the relevant evidence, the investigator will send to each party the evidence obtained during the investigation that is directly related to the allegations raised, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence. Each party will then have at least 10 calendar days to submit a written response for a Title IX complaint. The investigator will consider the written response prior to the completion of the investigative report.

(b) At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence and evaluates the credibility of the parties. Credibility determinations must not be based on a person's status as a complainant, respondent, or witness. The investigator will prepare an investigative

report that accurately summarizes the information gathered and provides a recommendation to the student disciplinary council as to whether or not this code or the student conduct code has been violated based on a preponderance of the evidence.

(c) The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR at least 10 days prior to any hearing. The investigator will also provide a copy of the report to the parties for their review and written response. The director of SRR will then convene the student disciplinary council for a hearing in accordance with WAC 172-125-230 and assign the parties university provided advisors for purposes of the hearing if they do not already have an advisor.

(5) **Timelines and extensions.** EWU must respond to complaints under this code in a prompt and equitable manner. To assist EWU in reaching this goal, this code includes various timelines. EWU's goal is to have investigations completed within 90 days. If the university needs additional time, the investigator must provide written notice to the complainant and respondent of the delay and reasons for the delay. Delays and extensions beyond 90 days must be based on good cause.

[Statutory Authority: RCW 28B.35.120(12). WSR 25-14-092, s 172-125-225, filed 7/1/25, effective 8/1/25.]

WAC 172-125-230 Full hearings before the student disciplinary council. (1) **Appointment of council.** When a student disciplinary council is needed for a full hearing following a request for a full hearing under the Level Two Process or in all cases involving a Level Three Process, the Title IX coordinator or dean of students shall appoint a presiding officer and members to serve on the council consistent with the procedures for appointing a council under the student conduct code, chapter 172-121 WAC. Full hearings are determined by a majority vote of the council and are conducted de novo.

(2) **Prehearing.** Following receipt of a timely request for a full hearing, the director or designee will notify both parties of the date, time, and location of the prehearing. The purpose of the prehearing is to explain the hearing procedures to the parties, schedule a date for the full hearing, and to address any preliminary matters or motions. A full hearing must be scheduled within 30 calendar days of the date of the request for a hearing from a party, absent good cause for an extension.

(3) **Notice of hearing.** Following the prehearing conference, the director shall schedule the hearing and serve the respondent and complainant with notice of the date, time, location, participants, and purpose of the hearing. At the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of any hearing may be conducted by electronic means. Each party in the hearing must have an opportunity to participate effectively in the hearing. This may include remote participation via audiovisual means. The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to student accommodation and support services and approved as a reasonable accommodation in advance of the hearing. A person may bring a certified therapy animal with a handler to a hearing. The notice of hearing must be served on the respondent and complainant at least seven calendar days prior to the hearing. The

director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(4) **General hearing procedures.**

(a) **Hearing authority.** The presiding officer exercises control over hearing proceedings. All procedural questions are subject to the final decision of the presiding officer. The presiding officer chairs the disciplinary council.

(b) **Closed hearings.** All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the presiding officer.

(c) **Appearance.**

(i) Failure to appear. In cases where proper notice has been given but the respondent fails to attend the hearing, the council shall decide the case based on the information available, without the respondent's input. The council may not make an inference about the determination regarding responsibility based solely on a party's or witness's failure to appear at the hearing. However, nonappearance by a party may impact the evidence available for the council to make a decision.

(ii) Options for appearing. The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person via a method that allows the council to hear the parties and physically observe them while testifying, subject to the limits set forth in (e) of this subsection. If a party does not appear at the hearing, the council will decide the case based on the information available. The council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(d) **Advisors.** The complainant and the respondent may be assisted by one advisor during conduct review hearings. The advisor is there to provide guidance and advice to the party, but is not allowed to speak on behalf of the party, answer questions on the parties behalf, or question the other party or witnesses except for Level Three hearings in which case the advisor may question the parties and witnesses.

(e) **Disruption of proceedings.** Any person, including a party or advisor, who disrupts a hearing or does not follow the standards of decorum set by the presiding officer, may be excluded from the proceedings.

(f) **Remote appearance.** In the interest of fairness and expedience, the presiding officer may permit any person to appear by a method that allows the person to be seen and heard by the council.

(g) **Standard of evidence.** The council shall determine whether the respondent violated this code and the student conduct code, as charged in the notice of allegations sent by the investigator, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated this code or the student conduct code.

(h) **Evidence.** The council will be provided with a copy of the investigative report and all associated exhibits. The investigative report and exhibits will be admitted into evidence. If the parties wish the council to consider additional documentary evidence, such evidence should be provided to the director in advance of the hearing. The council may review proposed exhibits prior to the hearing.

(i) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of

their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The presiding officer may exclude irrelevant material. If not inconsistent with this section, the presiding officer shall refer to the Washington rules of evidence as guidelines for evidentiary rulings. Prior or subsequent conduct of the respondent may be considered in determining opportunity, intent, preparation, plan, identity, a pattern of conduct, credibility, or absence of mistake or lack of knowledge. Prior to allowing a question to be answered during a hearing, the presiding officer must determine whether the question is relevant and, if excluded, the presiding officer must explain the basis for their decision on the record.

(ii) The respondent and complainant have the right to view all material presented during the course of the hearing. If a respondent's disciplinary history is considered solely for sanctioning purposes, the complainant does not have a right to review the history.

(iii) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(iv) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(v) Official notice may be taken of (A) any easily verifiable facts such as dates or weather conditions, (B) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (C) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(vi) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452, except for the additional restrictions on the admission of evidence required by Title IX.

(i) **Discovery.** Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents in the university's possession as long as such request is submitted at least seven calendar days prior to the hearing, absent extenuating circumstances. If the presiding officer determines the request is not relevant to the present allegation, the presiding officer may deny the request. The university will provide the requested information prior to the hearing to the extent feasible and permitted by state and federal law.

(j) **Subpoenas.** Subpoenas may be issued by the presiding officer or an attorney consistent with RCW 34.05.446. However, for the protection of both parties, a party cannot subpoena the other party. A party may request an exemption from this rule by filing a written request with the presiding officer at least 10 calendar days prior to the hearing. The presiding officer will provide a copy of the request to the other party and give them three days to respond. The presiding officer will then decide whether or not sufficient cause exists to grant an exemption to this rule and will inform the parties of the decision.

Any subpoena issued must conform to EWU's subpoena form. Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall direct the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under their control.

A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing. A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving them a copy thereof, or by leaving such copy at the place of their abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury. The presiding officer, upon motion by a party or at their own discretion, may quash or modify the subpoena if it is unreasonable or oppressive. Subpoenas may not be used to threaten or intimidate parties or witnesses.

(k) **Motions.** Motions for summary judgment and motions to dismiss are not permitted under this process.

(l) **Opening statements.** The parties and the investigator may provide a brief opening statement to the council at the beginning of the proceeding. The statement may be made verbally or in writing and will be limited to the length identified by the presiding officer. Advisors are not permitted to make opening statements. The presiding officer may place the parties or investigator under oath before receiving the opening statement. The investigator's statement shall include a summary of the steps taken during the investigation, evidence gathered, and the portions of the relevant codes the respondent is alleged to have violated. Closing arguments are not permitted as the focus of the hearing is on gathering and evaluating evidence.

(m) **Witnesses.**

(i) The complainant, respondent, and the university's investigator may call witnesses at full hearings.

(ii) The person who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the presiding officer to subpoena witnesses. The presiding officer has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable, oppressive, or does not conform to EWU's subpoena form.

(iii) The presiding officer may exclude witnesses from the hearing room when they are not testifying. The presiding officer is not required to take the testimony of all witnesses called by the parties if such testimony may be irrelevant. Any decision to exclude a witness shall be explained on the record.

(iv) All parties have the right to hear all testimony provided by witnesses during the hearing.

(v) The parties should inform the presiding officer of any possible need for an interpreter or any accommodation requests at least 10 calendar days prior to the hearing. The presiding officer will comply with WAC 10-08-150.

(n) **Questioning.** The university investigator, presiding officer, or the council may ask questions of any witnesses or the parties.

(i) Level Two Process: The complainant and respondent will both be given the opportunity to submit questions in writing to the presiding officer for each party/witness. The presiding officer will ask the questions of the party/witness proposed by the complainant or respond-

ent as long as the questions are relevant and not otherwise impermissible. The presiding officer will not ask proposed questions that are unclear or that harass the party or witness being questioned. In no case will the complainant, respondent, or their advisors question witnesses or parties directly.

(ii) Level Three Process: All questions of witnesses must be asked by an advisor, the investigator, the presiding officer, or the student disciplinary council. Questions may be asked directly by the advisor or investigator and do not need to be submitted in writing to the presiding officer. The presiding officer may limit or exclude questions that are irrelevant, harassing, or that have already been asked. Prior to allowing a question to be answered during cross-examination, the presiding officer must determine that the question is relevant, and, if excluded, the presiding officer must explain on the record the reason for the exclusion. The council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(iii) Level Two and Level Three Processes: The presiding officer must exclude and the council shall not consider any questions or evidence pertaining to the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The presiding officer will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(o) **Remote appearance.** The presiding officer may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by video conferencing, or other means that allows the council and parties to see and hear the party answering questions, as determined appropriate.

(p) **Role of the presiding officer.** The presiding officer has authority to take actions related to the hearing process including, but not limited to:

(i) Determine the order of presentation of evidence;

(ii) Administer oaths and affirmations;

(iii) Issue subpoenas pursuant to RCW 34.05.446;

(iv) Rule on procedural matters, objections, and motions;

(v) Rule on offers of proof and receive relevant evidence;

(vi) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(vii) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(viii) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to each party's opportunity for cross-examination and rebuttal;

(ix) Take official notice of facts pursuant to RCW 34.05.452(5);

(x) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(xi) Take any other action necessary and authorized by any applicable statute or rule.

(q) **Role of the investigator.** The investigator will provide an opening statement outlining the notice of investigation and allega-

tions, the steps taken during the investigative process, a brief summary of the evidence gathered, and the investigator's recommendation. The investigator may also call witnesses, ask questions, and offer evidence during the hearing.

(r) **Deliberations and sanctions.** Following the hearing, the council will determine in closed session whether, by a preponderance of the evidence, the respondent violated this code or the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the council shall make a decision based on the information available. The council shall make its decisions based on a majority vote. If the council determines the respondent violated this code or the student conduct code, the presiding officer shall then decide what sanctions and remedies shall be imposed. The presiding officer may review the respondent's previous disciplinary history for purposes of determining the appropriate sanction. In addition to sanctions under this code, if the student is also an employee of the university, the presiding officer's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

The council shall issue a decision including their findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The findings shall be based exclusively on the evidence provided at the hearing or contained in the investigative report. If the council finds the respondent violated the code, the presiding officer shall add the decision regarding sanctions and remedies to the council's decision. Such decisions should be served on the complainant and respondent within 14 calendar days from the date of the hearing. The written decision shall also:

(i) Designate all parties and representatives participating in the proceeding;

(ii) Identify the allegations at issue;

(iii) A description of the procedural steps taken, including notifications to the parties, interviews with the parties and witnesses, methods used to gather other evidence, and hearings held;

(iv) Contain findings of fact;

(v) Contain conclusions regarding the application of university policies and this code to the facts;

(vi) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed, and if any remedies are necessary to provide to the complainant or any other impacted student to restore or preserve equal access to the EWU's educational programs or activities;

(vii) Contain a statement describing rights to appeal and the procedures for appealing.

(s) **Finality.** The council's and presiding officer's decision becomes final at the conclusion of this process if an appeal is not timely filed.

(t) **Notice of decision.** The presiding officer shall serve the complainant and respondent with a copy of the decision and notice of the right to appeal. The Title IX coordinator must also be provided with a copy of the decision as the Title IX coordinator is responsible for effective implementation of any remedies.

[Statutory Authority: RCW 28B.35.120(12). WSR 25-14-092, s 172-125-230, filed 7/1/25, effective 8/1/25. Statutory Authority: RCW 28B.35.120(12), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, 42 U.S.C. § 12101 et seq., and chapter 28B.112 RCW. WSR 24-22-048, s 172-125-230, filed 10/28/24, effective 11/28/24.]

WAC 172-125-240 Appeals of student disciplinary council decisions. (1) **Timeline.** Either party may file an appeal from the student disciplinary council's decision. Appeals must be submitted in writing by 5:00 p.m. PST within seven calendar days from the date the student disciplinary council's decision is sent to the parties. Appeals must be submitted via email to srr@ewu.edu. The appeal must include the party's name and why they believe the student disciplinary council's decision was incorrect based on the bases for appeal outlined below.

(2) **Basis for appeal.** Appeals may be filed for one or more of the following reasons:

(a) Procedural irregularity that would change the outcome of the student disciplinary council's decision;

(b) New evidence that would change the student disciplinary council's decision that was not reasonably available when the investigative report was finalized; or

(c) A member of the student disciplinary council or the presiding officer had a conflict of interest or bias for or against complainants or respondents generally or the individual parties that would change the outcome of the investigation.

(3) **Response.** Once an appeal is filed, the office of student rights and responsibilities will serve the other party with a copy of the appeal. The other party will be given five calendar days to provide a written response to the appeal.

(4) **Stay of sanctions.** Sanctions go into effect immediately after the council's decision is issued. If the respondent wishes to have a sanction stayed during the appeal process, a request for a stay must be filed along with the notice of appeal. The request for the stay will be reviewed by the director or designee. The stay may be granted in part or in its entirety, at the discretion of the director. The decision will be served on the respondent and the complainant. This decision is not subject to appeal.

(5) **Appeal authority.** Appeals will be determined by the vice president for student affairs or designee. The director will provide the appeal authority with the notice of appeal, any responses to the appeal, and the complete record of the student disciplinary council hearing. Before rendering a decision, the appeal authority may request additional information or explanation from the parties. However, except as required to explain the basis of new information, an appeal shall be limited to a review of the evidence presented to the student disciplinary council.

(6) **Decisions.** After reviewing the appeal, the appeal authority may affirm, reverse, modify, or remand the decision(s) of the student disciplinary council. The appeal decision shall include an explanation of the appeal authority's decision and rationale. The appeal decision must be issued within 30 calendar days of the appeal authority receiving all necessary documentation. In cases where the appeal authority

remands the decision or sanction, the case will be returned to the student disciplinary council or presiding officer for reconsideration or other action as specified by the appeal authority. With respect to sanctions, the appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

(7) **Notification.** Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall draft a brief written statement setting forth the outcome of the appeal and the basis for their decision. The written statement is then forwarded to the director. The director shall serve the complainant and respondent with the written statement. The notice will also inform the parties that the appeal authority's decision is final and no further appeals may be made within the university. Judicial review of the university's decision may be available under chapter 34.05 RCW.

[Statutory Authority: RCW 28B.35.120(12). WSR 25-14-092, s 172-125-240, filed 7/1/25, effective 8/1/25. Statutory Authority: RCW 28B.35.120(12), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, 42 U.S.C. § 12101 et seq., and chapter 28B.112 RCW. WSR 24-22-048, s 172-125-240, filed 10/28/24, effective 11/28/24.]

WAC 172-125-250 Sanctions and remedies. If any student or student organization is found to have committed a violation of WAC 172-125-010, one or more of the sanctions described in this section may be imposed against the student or student organization. Imposed sanctions are effective as of the date the director or student disciplinary council issues its decision unless the decision specifically identifies an alternative date. Failure to comply with any imposed sanction may result in additional sanctions. In addition to the sanction imposed by this code, if a student is also an employee of the university, the university may impose additional discipline in accordance with its policies and procedures pertaining to employees.

(1) **Individual student sanctions.**

(a) Admonition: An oral statement to a student that they have violated university rules and regulations.

(b) Warning: A notice to the student or student organization that they have violated the standards for students and that any repeated or continuing violation of the same standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any university policy or regulation within a stated period of time.

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period

of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's university-related privileges;

(ii) Limiting the student's participation in extracurricular activities; and/or

(iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) Restitution: Reimbursement to the university or others for damage, destruction, or other loss of property. Restitution also includes reimbursement for medical expenses incurred due to code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements may result in a hold on a student's ability to register and may prevent the student from future registration until restitution conditions are satisfied.

(f) Fines: Monetary fines up to a maximum of $500 against individual students for violation of university rules or regulations or for failure to comply with university standards of conduct may be imposed. Failure to promptly pay such fines may prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) Discretionary sanctions: Work assignments, service to the university community or other related discretionary assignments for a specified period of time as directed by the hearing authority.

(h) Loss of financial aid: In accordance with RCW 28B.10.902, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time determined by the university.

(i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment and further assessment apply to either continued attendance or return after a period of suspension.

(j) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restrictions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered. Suspensions may be noted on the student's transcript during the period of time the suspension is in effect.

(k) Expulsion: Permanent separation of the student from the university with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from university premises. Expulsions may be noted on the student's transcript.

(l) Loss of institutional, financial aid funds: Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(m) Revocation of degree: A degree awarded by the university may be revoked for fraud, misrepresentation, or other violation of law or university standards. Revocation of a degree is subject to processes

outlined in this chapter except that revocation of a degree must also be approved by the university president.

(2) **Student organizations and/or group sanctions.** Any of the above sanctions may be imposed in addition to those listed below:

(a) Probation: Formal action placing conditions on the group's continued recognition by or permission to function at the university. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) Social probation: Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) Restriction: The temporary withdrawal of university or ASEWU recognition for a group, club, society or other organization. Restriction is subject to the processes outlined in this chapter except any restriction must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(d) Revocation: The permanent withdrawal of university or ASEWU recognition for a group, club, society or other organization. Per RCW 28B.10.902, any organization, association, or student living group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of recognition by the university;

(e) Additional sanctions: In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

(i) Exclusion from intramural competition as a group;

(ii) Denial of use of university facilities for meetings, events, etc.;

(iii) Restitution; and/or

(iv) Fines.

(3) **Remedies.** For violations of this code, the university may provide remedies to the complainant and other students impacted by the discriminatory conduct designed to restore or preserve equal access to the university's educational programs or activities.

[Statutory Authority: RCW 28B.35.120(12), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, 42 U.S.C. § 12101 et seq., and chapter 28B.112 RCW. WSR 24-22-048, s 172-125-250, filed 10/28/24, effective 11/28/24.]

PART III: DEFINITIONS AND ADMINISTRATION

WAC 172-125-300 Definitions. For purposes of this code, chapter 172-125 WAC, the definitions in this section apply.

"Appeal authority" refers to the university official presiding over an appeal.

"Appellant" refers to any respondent or complainant who appeals a decision.

"Complainant" means the person who was subjected to the alleged misconduct. The complainant may or may not be the reporting party. If the person who was subjected to the alleged misconduct does not wish

to pursue a complaint under this code, the university may initiate the student conduct process on its own behalf.

"Complaint" means an oral or written request to the university to investigate a report of discrimination.

"Council" or "the council" refers to the student disciplinary council.

"Council hearing" refers to a full conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or designee.

"Director of SRR" or "director" refers to the director of student rights and responsibilities or designee.

"File" or "filing" means to actually deliver documents. Documents required to be filed with a specific person at EWU under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the student rights and responsibilities office, sending them via United States mail, properly addressed, postage prepaid, to 129 Showalter Hall, or emailing them to srr@ewu.edu.

"Formal Title IX complaint" means a formal signed complaint from a current student, applicant, employee, or person participating in or seeking to participate in a university program or activity, or by the Title IX coordinator, alleging sexual harassment, sexual assault, domestic violence between intimate partners, dating violence, or sex-based stalking for conduct that occurred on university premises, during a university program or activity within the United States, or at a building owned or controlled by a student organization that is officially recognized by the university. A complaint of sexual misconduct or interpersonal violence will only be considered a Title IX complaint under this code if it meets this definition. Sexual misconduct or interpersonal violence may still be addressed under this code if it does not meet the definition of a formal Title IX complaint using a Level One or Level Two process.

"Interpersonal violence" encompasses domestic violence, dating violence, and stalking.

"Level One Process" refers to the grievance procedures used to investigate and make determinations of responsibility for violations of this code that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion, and do not involve felony-level crimes.

"Level Two Process" refers to the grievance procedures used to investigate and make determinations of responsibility for violations of this code that, if substantiated by a preponderance of evidence, may result in a sanction of suspension or expulsion, or involve felony-level crimes.

"Level Three Process" refers to the grievance procedures used to investigate and make determinations of responsibility for violations of this code that fall within the definition of a "formal Title IX complaint."

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant, respondent, and/or the university.

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct for students, residence life handbook, housing contract, university policies, and graduate/undergraduate catalogs and handbooks.

"Presiding officer" refers to the university official who is assigned to preside over a student disciplinary council hearing.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the Associated Students of Eastern Washington University (ASEWU).

"Reporting party" means the person who notifies the university of alleged misconduct by a student or student organization. The reporting party may also be the complainant, but need not be the complainant.

"Respondent" refers to any student or student organization accused of violating the student conduct code under this chapter.

"Serve" means to send a document through electronic mail addressed to the party's university-issued email address or, if the party does not have a university-issued email address, to the email address on record with the university. Service is complete when the email is sent to the email address. Service may also be accomplished by personal delivery or regular U.S. mail. Notifications via regular U.S. mail are sent to the party's last known address or the address on file with the university registrar, and service is complete on the date the notice is placed in the mail. The student is responsible for maintaining an updated mailing address on file with the registrar. Recognized or registered student organizations are responsible for updating their mailing address with their designated university office.

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person who is enrolled or has been enrolled at the university for up to 12 months from the last date they were enrolled;

(c) Nonmatriculated, international students attending institutes or foreign study programs through the university; and

(d) Any person who was previously enrolled at the university for violations of the code committed while enrolled regardless of when they were enrolled. A person who engaged in conduct in violation of this code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

"Title IX coordinator" refers to the Title IX coordinator or designee.

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented, or operated by the university.

"University president" refers to the university president or designee.

"Vice president for student affairs" refers to the vice president for student affairs or designee.

[Statutory Authority: RCW 28B.35.120(12). WSR 25-14-092, s 172-125-300, filed 7/1/25, effective 8/1/25. Statutory Authority: RCW 28B.35.120(12), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., section 504 of the Rehabilitation Act of 1973, Ameri-

cans with Disability Act of 1990, 42 U.S.C. § 12101 et seq., and chapter 28B.112 RCW. WSR 24-22-048, s 172-125-300, filed 10/28/24, effective 11/28/24.]

WAC 172-125-301 Calculation of time periods. In calculating any of the time periods identified in this code, the day of any act or service of notice is not included in calculating the deadlines. For example, if an order is served on a student on a Monday and the student has 10 calendar days to appeal the order, the date of service (Monday) does not count towards the time period, the next day (Tuesday) does count toward the time period, and the appeal would be due by 5:00 p.m. on the following Thursday.

If the last day of a time period ends on a Saturday or Sunday, the deadline is extended to 5:00 p.m. on Monday. If the last day of a time period ends on a university holiday, the deadline is extended to 5:00 p.m. on the next weekday following the holiday.

[Statutory Authority: RCW 28B.35.120(12), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, 42 U.S.C. § 12101 et seq., and chapter 28B.112 RCW. WSR 24-22-048, s 172-125-301, filed 10/28/24, effective 11/28/24.]

WAC 172-125-302 Conflicts of interest and bias. (1) Individuals who play a role in investigating, presiding over, and making decisions pertaining to individual cases under this code including, but not limited to, the Title IX coordinator, dean of students, investigator, presiding officer, council, and appeal authority, shall not have any conflict of interest in the process or a bias for or against complainants or respondents generally or an individual complainant or respondent. A conflict of interest exists if the investigator, presiding officer or decision maker is the respondent, complainant, or a witness; if the respondent, complainant, or witness is a family member or friend; if the individual has a personal interest or bias; or if the individual has previously served in an advisory capacity for any of the parties or witnesses. In the event such a conflict arises in the process, the person shall disclose such interest to the parties. Parties to the complaint who believe a university official involved in the process has a conflict of interest may report such concerns to the Title IX coordinator within three calendar days of becoming aware of the potential conflict. The Title IX coordinator or designee shall determine whether a conflict of interest exists and take appropriate action. If the Title IX coordinator is the person alleged to have a conflict of interest or bias, the party may report such concerns to the dean of students, and the dean of students shall determine whether a conflict of interest exists and take appropriate action.

(2) Challenges to council membership. Members of the student disciplinary council and the presiding officer are subject to the conflict of interest limitations set forth in subsection (1) of this section.

(a) If a member has such a conflict, the person shall recuse themselves from further involvement in the case. In the event such a conflict arises after the council has been selected or during a proceeding, the member shall disclose the conflict to the parties.

(b) A council member's or the presiding officer's eligibility to participate in a case may be challenged by parties to the case or by other council members at any time by submitting a motion to disqualify to the presiding officer. When such a challenge is made, the session council, excluding the person alleged to have a conflict of interest, shall make a decision on the challenge.

(c) If a member is disqualified or disqualifies him/herself from a case, the presiding officer will appoint a replacement.

[Statutory Authority: RCW 28B.35.120(12), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, 42 U.S.C. § 12101 et seq., and chapter 28B.112 RCW. WSR 24-22-048, s 172-125-302, filed 10/28/24, effective 11/28/24.]

WAC 172-125-305 Administration and records. (1) **Authority and interpretation.** The board of trustees of Eastern Washington University, acting under the authority granted by RCW 28B.35.120, has established this code for addressing concerns of discrimination by students. The responsibility for enforcement of this code rests with the university president and is further delegated to the vice president for student affairs and Title IX coordinator. Any questions regarding the interpretation or application of this code are referred to the Title IX coordinator for final determination. This code is not intended to protect any person or class of persons from injury or harm.

(2) **Records of resolution and grievance procedures.** Records relating to complaints, supportive measures, informal resolutions, investigations, conduct proceedings, sanctions, and remedies under this chapter shall be kept by the Title IX office for seven years from conclusion of a proceeding. Records pertaining to sanctions must also be maintained by the office of student rights and responsibilities for seven years from the conclusion of a proceeding.

(3) **Confidentiality of student disciplinary records.**

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with the university's records retention schedule.

(b) Release of student disciplinary records. The university shall not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(iii) In response to a judicial order or a lawfully issued subpoena.

(iv) The university shall release information related to disciplinary records to complainants or other persons as required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other state and federal laws.

(v) Disciplinary records will be made available to hearing councils and university personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of their own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by providing a written consent to student rights and responsibilities.

(vii) Any student may review his/her own disciplinary records by contacting student rights and responsibilities.

(viii) A student may obtain a copy of their disciplinary record by making a written request to student rights and responsibilities. The university may charge the student a reasonable amount to cover copying expenses.

(ix) The university may disclose to a student's parents a violation of any federal, state, or local law, or of any university policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of 21 at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by law.

(d) Supportive measures. The university will keep any supportive measures provided to the complainant or respondent confidential to the extent that maintaining such confidentiality will not impair the ability of the university to provide the supportive measures.

(4) **Holds.**

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic activities. Holds may also restrict access to transcripts, grades, or other academic records.

(b) Discretionary holds: The director or presiding officer may place a hold on a student's academic records in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed under this code; or

(ii) If the student fails to respond to any properly delivered notice under this code.

(c) Required holds: The director shall place a hold on a student's academic record if the student is the respondent to a violation of the conduct code and has withdrawn from the university, or if the student withdraws from the university after a complaint is filed against the student. A hold is also required if a student is subject to a pending student conduct complaint at the time of graduation. This hold shall remain in place until the allegation or complaint is resolved.

[Statutory Authority: RCW 28B.35.120(12), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, 42 U.S.C. § 12101 et seq., and chapter 28B.112 RCW. WSR 24-22-048, s 172-125-305, filed 10/28/24, effective 11/28/24.]